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FEDERAL WORST CASE SCENARIO

In the next three months, while Congress is out of session, three Federal agencies could take action on proposals relating to ETS. We can expect that, at the very least the most restrictive anti-smoking policy will be given serious consideration by all.

We have been successful this year in calling attention to the lack of conclusive scientific evidence necessary to regulate or legislate exposure to tobacco smoke. A provision in House legislation which called for a new warning label on the dangers of ETS was deleted before the subcommittee completed its action. In addition , all references to ETS were recently excised from the Senate Clear Indoor Air bill.

In light of the pending proposals, we have anticipated what might occur and have put together a strategy for combatting any action that be contrary to our position.

LEGISLATIVE and REGULATORY ACTION :

In September, Dr. Dwight Janerich's study on childhood exposures to ETS and the incidence of lung cancer was released. His thesis will, no doubt, be the basis for whatever action EPA finally takes on ETS. While no other studies substantiate his thesis, it is clear that the most compelling argument in favor of placing restrictions on tobacco (marketing or consumption oriented), is one which professes to protect the health of children.

It will be very difficult to convince legislators and the media that children aren't at risk, and perhaps we shouldn't try. It appears that his childhood exposure findings will be difficult to substantiate and that the best rebuttal will be the "who really -remembers-what-they-were-exposed-to-when-they-were-children (30 - 50 years ago) argument. We can hammer home that there is evidence that shows that exposure to ETS at home, in social settings and at the workplace is not a serious health risk. Any regulation that is based on the presumption of a serious health risk is misleading because it would undoubtedly involve restrictions on smoking in the workplace.

Every time that an agency or legislator proposes or argues for smoking restrictions or bans, PM should make contact by requesting a meeting or explaining in a letter, with attachments, why such an action is misguided. There are several measures pending in Congress which seek to ban or restrict smoking and it would be useful for us to educate the authors about what the science actually says and what are responsible remedies. For instance, when a member of Congress requested that the Association of Airport Executives consider protecting passengers from exposure to tobacco smoke while they were waiting to board planes, the industry immediately contacted the association and offered to make a presentation about what we knew about exposure to ETS, and to offer several ventilation and logistical solutions to the perceived problem. The result of that exercise satisfied all parties.

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FEDERAL AGENCY ACTION:

ICC: On September 10, the INTERSTATE COMMERCE COMMISSION (ICC) announced that it was accepting public comments on petitions filed with that agency requesting that smoking on interstate buses be banned. While both petitions cited the "overwhelming scientific evidence in support of such a ban", the petition filed by Action on Smoking and Health (ASH) went so far as to demand that smoking on all buses, charters included, was necessary to protect the health of passengers. The ICC has stated that it is inclined to adopt the ASH petition's recommendations. Without our input and persistent attempts to educate the commissioners, we will undoubtedly end up with a total ban on smoking on buses and worse, one more notch on the belt of those groups that seek to make the case that tobacco smoke is a serious health hazard.

As soon as the comment period started we were precluded from speaking directly with the commissioners about the petitions, but we can send in our comments. In addition to mobilizing bus passengers who smoke to send in letters of protest, PM should make a formal submission to the commission both criticizing ASH for misinterpreting the scientific evidence and acquainting them with the current status of the EPA risk assessment. It would also be wise to send a copy of the 1990 DOT study which all but exonerated cigarette smoke as a health hazard in airplane cabins.

OSHA: As a result of an agreement this summer between the Occupational Safety and Health Administration (OSHA) and ASH, OSHA has committed to deciding whether to pursue workplace regulations or guidelines re: exposure to tobacco smoke. ASH had petitioned OSHA to issue a emergency temporary standard to protect workers from tobacco smoke. OSHA denied the petition after a review of the literature uncovered no workplace ETS studies. Certainly there is no substantiation for ASH's request given the findings of the most recent studies which could find no risk associated with exposure to tobacco smoke in the workplace. However, OSHA must inform ASH by November 30 what its intentions are with regard to ETS Unlike EPA, OSHA does have the authority to regulate smoking in the workplace if it finds that the risks are significant. OSHA is also under some pressure to assert its jurisdiction over all workplace hazards as other agencies begin to take actions which have an impact on workers health and safety.

It may be in our best interest to have OSHA assert its jurisdiction forcefully. By urging OSHA to request information about EPA's actions on ETS, we may have limited the scopy of EPA's police guide and raised the issue to a level that would warrant the Administration's scrutiny. There is no doubt that OSHA will take some action on its own with regard to workplace and while their process is strictly regulatory, we are not

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without allies in dealing with the Labor Department. Unlike EPA, where there are no formal rules governing what non-regulatory action they may take, it is possible to work within the regulatory framework at OSHA in order to steer their efforts toward indoor air quality rather than source control.

EPA: The comment period for the risk assessment and the policy guide ends on October 1. It is unclear what EPA plans to do with its documents at that time. It is our understanding that they intend to present them to the Science Advisory Board and then prepare to release an Environmental Tobacco Smoke "kit" (including the risk assessment, policy guide and literature compendium) sometime in the spring of 1991. The Science Advisory Board has yet to set a date for its meeting and the panel has not been selected. One could safely say that the delay in the proceedings is due to our vigilance in making sure that the process is conducted in a fair and orderly manner.

If EPA does not act in a "reasonable" amount of time, we anticipate that anti-smoking advocates could submit a citizens petition requesting that EPA move the process along. It could be similar to the petitions filed with OSHA and the ICC. In any case, the process would be further politicized and Congressional involvement could occur. There are several vehicles which have been introduced in the past and are likely to be reintroduced in the 102nd Congress, which could move quite rapidly if there is considerable pressure from the press and consumer groups. Our strategy hinges on the findings of the Science Advisory Board and the timing of its meeting. Meanwhile, we should continue to take an aggressive posture by protesting the narrow and misleading interpretations of studies on ETS adopted by EPA. It would also behoove us to elicit the support of other industries and business organizations that have an interest in the quality of work performed by EPA.

In the past few months, we have seen greater attention placed on how and to whom EPA and other government agencies award contracts, the accuracy and impartiality of scientific research as well the fundamentals of scientific research. Philip Morris is in a position to have an input into this discussion and perhaps to focus the debate on setting standards for scientific analysis. This message can be communicated through many fora, including the SAB meeting, Congressional hearings, technical conferences and seminars and correspondence.

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